

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAN REDLER INSURANCE & FINANCIAL
SERVICES, INC.,

Plaintiff,

v.

CONSUMER BENEFITS GROUP, LLP dba
BOOMER BENEFITS,

Defendant.

No. 2:21-cv-01267-TL

STIPULATED AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND
~~[PROPOSED]~~ ORDER

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and

1 related responses should be reasonably targeted, clear, and as specific as possible.

2 **B. ESI Disclosures**

3 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
4 party shall disclose:

5 1. Custodians. The three custodians most likely to have discoverable ESI in their
6 possession, custody, or control. The custodians shall be identified by name, title, connection to
7 the instant litigation, and the type of the information under the custodian's control.

8 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared
9 drives, servers), if any, likely to contain discoverable ESI.

10 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
11 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud
12 storage) and, for each such source, the extent to which a party is (or is not) able to preserve
13 information stored in the third-party data source.

14 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
15 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the
16 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

17 5. Foreign data privacy laws. Nothing in this Order is intended to prevent either party
18 from complying with the requirements of a foreign country's data privacy laws, e.g., the
19 European Union's General Data Protection Regulation (GDPR) (EU) 2016/679. The parties
20 agree to meet and confer before including custodians or data sources subject to such laws in any
21 ESI or other discovery request.

22 **C. ESI Discovery Procedures**

23 1. On-site inspection of electronic media. Such an inspection shall not be required
24 absent a demonstration by the requesting party of specific need and good cause or by agreement
25 of the parties.

1 2. Targeted Search Approach. The Parties agree that relevant discovery in this case
2 is likely to be located primarily via go-and-get collections, rather than custodial e-mail . As such,
3 to conserve resources, the Parties agree that at the outset, they will respond and produce
4 information, documents, communications, and things in response to discovery requests by
5 conducting targeted go-and-get searches and collections as opposed to engaging in the wholesale
6 collection and searching of entire custodian e-mail inboxes, (“Targeted Search Approach”). If
7 either Party believes that the results of this Targeted Search Approach are inadequate with respect
8 to a discovery request, they may request to meet and confer to discuss whether it is necessary to
9 proceed to using the Search Methodology described below, modified by agreement of the Parties
10 where necessary.

11 This Targeted Search Approach is not intended to limit the Parties’ responsibility to
12 conduct a good-faith, reasonable, and diligent search for responsive information and documents
13 in responding to discovery requests, nor is this Paragraph intended to prohibit the parties from
14 conducting searches within relevant e-mail inboxes and document repositories throughout the
15 course of discovery.

16 3. Search Methodology. Only upon request, the parties shall timely confer to attempt
17 to reach agreement on appropriate search terms and queries, file type and date restrictions, data
18 sources (including custodians), and other appropriate computer- or technology-aided
19 methodologies, before any such effort is undertaken. The parties shall continue to cooperate in
20 revising the appropriateness of the search methodology.

21 a. Prior to running searches:

22 i. The producing party shall disclose the data sources (including
23 custodians), up to 15 search terms and queries, any file type and date restrictions, and any other
24 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
25 information. In the event that a receiving party believes that 15 search terms are insufficient, the
26 producing party may provide unique hit counts for each search query. The parties shall then

1 confer in good faith to agree on a final list of search terms before production of ESI to be located
2 by search terms.

3
4 iii. The following provisions apply to search terms / queries of the
5 requesting party. Focused terms and queries should be employed. A conjunctive combination of
6 multiple words or phrases (e.g., “computer” and “building”) narrows the search and shall count
7 as a single search term. A disjunctive combination of multiple words or phrases (e.g., “computer”
8 or “building”) broadens the search, and thus each word or phrase shall count as a separate search
9 term unless they are variants, synonyms, or analogues of the same word. The producing party
10 may identify each search term or query returning overbroad results demonstrating the overbroad
11 results and a counter proposal correcting the overbroad search or query. A search that returns
12 more than 500 megabytes of data, excluding Microsoft PowerPoint files, audio files, and
13 similarly large file types, is presumed to be overbroad.

14 b. After production: Within 21 days of the producing party notifying the
15 receiving party that it has substantially completed the production of documents responsive to a
16 request, the receiving party may request no more than 10 additional search terms or queries. The
17 immediately preceding section (Section C(2)(a)(iii)) applies.

18 c. A requesting party may not subvert this process by including requested
19 custodians and search terms in its discovery requests.

20 4. Format.

21 a. ESI will be produced to the requesting party with searchable text, in a
22 format to be decided between the parties. Acceptable formats include, but are not limited to,
23 native files, Native Concordance or TIFF Concordance load files, and single-page TIFFs (only
24 with load files for e-discovery software that includes metadata fields identifying natural
25 document breaks and also includes companion OCR and/or extracted text files).

b. Unless otherwise agreed to by the parties, files that are not easily converted to image format, such as spreadsheet, database, and drawing files, will be produced in native format.

c. Each document image file shall be named with a unique number (Bates Number). File names should not be more than twenty characters long or contain spaces. When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where applicable, the revision history.

d. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

e. The parties shall produce their information with appropriate software load files containing all information required by the litigation support system used by the receiving party.

5. De-duplication. The parties may de-duplicate their ESI production across custodial and non-custodial data sources.

6. Email Threading. The parties may use analytics technology to identify email threads and need only produce the unique most inclusive copy and related family members and may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce a less inclusive copy.

7. Metadata fields. If the requesting party seeks metadata, the parties agree that only the following metadata fields need be produced, and only to the extent it is reasonably accessible and non-privileged: document type; custodian and duplicate custodians (or storage location if no custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size; file extension; date and time created, sent, modified and/or received; and hash value. The list of metadata type is intended to be flexible and may be changed by agreement of the parties, particularly in light of advances and changes in technology, vendor, and business practices.

8. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an electronic format, the production of hard-copy documents will include a cross reference file that indicates document breaks and sets forth the custodian or custodian/location associated with each produced document. Hard-copy documents will be scanned using Optical Character Recognition technology and searchable ASCII text files will be produced (or Unicode text format if the text is in a foreign language), unless the producing party can show that the cost would outweigh the usefulness of scanning (for example, when the condition of the paper is not conducive to scanning and will not result in accurate or reasonably useable/searchable ESI). Each file will be named with a unique Bates Number (e.g., the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

D. Preservation of ESI

The parties acknowledge that they have a common law obligation, as expressed in Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the parties shall preserve all discoverable ESI in their possession, custody, or control.

2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P. 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data is created after a disclosure or response is made (unless excluded under Sections (D)(3) or (E)(1)-(2)).

3. Absent a showing of good cause by the requesting party, the following categories of ESI need not be preserved:

a. Deleted, slack, fragmented, or other data only accessible by forensics.

b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

c. On-line access data such as temporary internet files, history, cache, cookies, and the like.

d. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).

e. Back-up data that are duplicative of data that are more accessible elsewhere.

f. Server, system or network logs.

g. Data remaining from systems no longer in use that is unintelligible on the systems in use.

h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such electronic data is automatically saved in real time elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

E. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. The producing party shall include such additional information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after delivering a production.

2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party, and its production shall not constitute a waiver of such protection.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DONE this 8th day of June, 2022



Tana Lin
United States District Judge